



# GREAT LAKES COALITION

*Michigan/Lake Michigan Chapter  
for Shoreline Preservation*

## NEWS LETTER

Visit the Coalition web site at [www.greatlakescoalition.org](http://www.greatlakescoalition.org)

**WINTER 2005**

Vol. 10, No. 1

## COALITION ROLLS ON

### **BANKS et al v UNITED STATES**

John Ehret, the attorney for the plaintiffs and a Coalition Director, has moved this property takings case, initiated in 1999, to another victory.

To refresh the reader's memory, 36 coastal property owners, south of the St. Joseph, Michigan navigational piers, contend that the construction and subsequent work on the piers have seriously destroyed the down drift shoreline by diverting the natural littoral drift of sand supplies. The case claims that gradual beach and bluff erosion have "taken" property away from the plaintiffs.

Originally dismissed (the Tucker Act's statute of limitations had run out) by the Court of Federal Claims, Mr. Ehret appealed the case and the United State Court of Appeals for the Federal Circuit reversed the prior decision.

The reversal was based upon the continued mitigation, under section 111 of the Rivers and Harbors Act of 1968, of the damage into the late 1990's by the US Army Corps of Engineers. This mitigation extended the statute period since the situation had not been permitted to stabilize.

Attorneys for the United States are concerned that this decision sets a precedent whereby an open-ended extension of liability might create a powerful disincentive to plan or undertake mitigation projects that otherwise might benefit the public or the environment.

For those readers whose coastal property lies in the downstream shadow of section 111 navigational jetties, is this the reason for the cessation of the intermittent beach replenishment by the Army Corps of Engineers? If it is, what a sorry day.

### **MICHIGAN COURT OF APPEALS REAFFIRMS OWNERSHIP TO THE WATERS EDGE**

The Court ruled to settle a dispute between neighbors on Lake Huron that stems from lower water levels that expose the beach.

The ruling confirms that property owners have exclusive rights to use the land (beach) extending to the waters edge. This right was affirmed in 1930 by the Hilt v. Weber decision of the Michigan Supreme Court.

Why do property owners on Michigan/ Huron always run into static when they try to follow the law? Even though exclusive right to the waters edge has been reaffirmed, the state has appealed the ruling because it wants to control the beach up to the subjective moving ordinary high water mark. Thus, the lower court ruling is to be reviewed by the Michigan Supreme Court. No doubt about it, the MDEQ wants your beach!

### **CHAIRMAN'S CORNER**

The writer has spent time reviewing sea grant, US Army Corps of Engineers, Detroit District's latest publication: *Living on the Coast*. On page 2 they state that, "Lake level responds to weather and climate."

The article articulates that sometimes individual lakes experience rapid level changes. In the near term on at least five occasions, Lake Michigan/ Huron rose or fell more than three feet (one meter) in about one and a half years. On the other hand, Lake Erie rose nearly three feet (one meter) in 1991 – 1993 and dropped about three feet (one meter) between 1930 – 1931 and 1986 – 1988. In 1930, Lake St. Clair dropped 3.8 feet (1.2 meters) in eight months.

We have experienced high water, above the mean some 37 years until 1999. This marks the first time that lake levels (Michigan/ Huron) have fallen below average since 1962.

With high water comes erosion as acknowledged by the Lake Michigan Potential Damage Study conducted by the Corp of Engineers. When one adds the navigational structures, this compounds the erosion exponentially, resulting in the loss of sand forever from the littoral drift or sand transfer system.

Sand (sediment) falls into the hole beyond the depth of closure, or it's dredged and hauled away from the lake shore (or dredged and dumped out in the lake), or it's storm driven into bays and outlets trapped forever.

Many parts of this world experience powerful storms infrequently that can move sediment like 100 earth movers overnight. Unfortunately in Michigan, we have these storms three or four times a year, in the spring and fall (worst November/ December).

Persistent high water with annual storms have driven the sediment into these trapped areas with no possible return (except for dredging) as evidenced in Traverse Bay, Saginaw Bay, boat basins, channels, marinas and small inlets and bays throughout the lake.

This gives the impression that the lakes are really low, where in fact as I write, Lake Michigan/ Huron is 8" below average; that is 3'5" (three feet, five inches) below the highs of 86 and 1'11" (one foot, eleven inches) above the lows of 62-64 (July), yet, many writers are still referring to low lake levels.

Now, add Isostatic Rebound, another phenomenon which is a land base theory or concept (the bottom of the lake is rebounding above the hinge line and sinking below the hinge line, with the further north you go the more significant the rebound. The land rebounds after being compressed by the glaciers. The Army Corp applies this theory to our lakes, which helps explain why our bays and inlets appear full of sediment or that lake levels are very low. High lake levels with future storm events (annual reality) will continue to compound these problems.

## **TAFT AND DUNCAN BRING SUIT**

International Coalition Chairman, Homer Taft and Scot Duncan, Ohio/ Lake Erie Chapter President, themselves licensed attorneys, have filed a takings suit against the Ohio Department of Natural Resources (ODNR). The ODNR has long been trying to establish a position in which the State owns the beach between the waters edge and a subjective moving ordinary high water mark. They further intend to lease the land back to the deed holders of lake front property with severe penalty to anyone who refuses. It should be noted that many of the deeds use the water line to define the lakeward boundary.

The Ohio Lakefront Group (OLG) has introduced legislation to negate this premise, but it is now terribly entangled in committee, where it has been so distorted by amendments that the OGL cannot even support it. Further, the State has introduced boiler plate to delay a vote or to set it aside.

Taft and Duncan have decided to bite the bullet and attempt to establish a legal precedent because the State of Ohio is attempting to breach the 5<sup>th</sup> amendment right of all property owners to hold and maintain their property unless reasonable compensations is offered and accepted.

Further, the Great Lake Coalition has joined with SOS, Save our Shoreline, in presenting an amicus brief to the Supreme Court, supporting lakeshore owners property rights to the waters edge.

## **WHAT WE DO AND HOW WE DO IT**

The mandate is clear that this is a unique organization that focuses upon the hopes and hurts of shoreline property owners for:

- Responsible water levels
- Uninterrupted or mitigated sand supplies
- The right to own, maintain, and protect coastal property granted by the 5<sup>th</sup> amendment to the US Constitution with just compensation if ownership changes

Whether we like it or not, many powerful forces stand ready to oppose these goals.

The Government of Canada and the United States are geared to support the needs of the many as opposed to the few fortunate or not so fortunate people that reside on the shore lines of the Great Lakes. There are also more organizations than one can count that desire to put the public on your beach.

Some of the strategies that have been tried to effectively deal with the hopes of coastal property owners are:

- Litigation
- Legislation, technical argument
- Political action

Since the desire for a piece of the shore line action is so compelling, the usual result is that hope makes us feel better, but the hurt returns when a Government agency twists the law or court decision that continues to sustain a process that's harmful to the Great Lakes ecosystem and sustaining the employment of the Corps of Engineers.

### **COALITION LEADERS INVITED TO ATTEND COASTAL ENGINEERING RESEARCH BOARD**

The 77<sup>th</sup> meeting of the Coastal Engineering Research Board (CERB), headquartered in Vicksburg, Mississippi, addressed Great Lakes System Management. It was called by the Great Lakes/ Ohio River Division of the US Army Corps of Engineers.

Michigan/ Lake Michigan chapter President and International Vice Chairman, Bill Somerville and Technical Director John Boyd represented the Coalition.

Dr. Nicholas Krause presented computer aided simulations of coastal attack by wind driven water. The "river of sand" theory was again supported.

We continue to encourage a holistic approach to the management of the Great Lakes ecosystem, including Ogoki and Long Lac, above Lake Superior.

This is the only way we can ever hope to attain responsible water level management,

shoreline mitigation and uninterrupted sand supplies.

### **SPECIAL MEETING BETWEEN I J C AND COALITION LEADERSHIP IN OTTAWA**

International Coalition Chairman Homer Taft, Vice Chairman Bill Somerville, and Technical Director John Boyd were invited to answer questions raised by Right Honorable Herb Gray, Canadian Chair of I J C.

This carefully crafted dialog is indeed unique in the annals of these two organizations, which is usually conducted in the presence of other interests that are also concerned with the vicissitudes of the Great Lakes.

The international aspect of Coalition objectives of water levels, sand supplies, and property rights were emphasized by the meeting venue at the Canadian capitol.

Technical and legal details were presented so clearly to the Commission that they complimented the Coalition on not only identifying problems, but also developing comprehensive solutions as well. The meeting concluded in a climate of mutual respect.

### **LAKE MICHIGAN LEVELS IMPACT ON RECREATIONS BOATING**

*Lake Michigan Potential Damage Study; Economic impact of Lake Michigan Levels on Recreational Boating by Planning & Zoning Center at Michigan State University Department of Parks, Recreation and Tourism, August 2002*, study observed at the total number of boat launches on Lake Michigan counted 134.

These boat launches over the years have been designed to maximize beneficially the launching of boats in a certain functional range at different lake levels. What did they find?

- Year 2001 (Year of actual study) – 47 usable
- Years 1962 – 1964 (lowest water level) projected 35 usable
- Year 1986 (highest water level) projected 17 usable

Further, the need for extensive dredging to deal with average, low water suggests many of these marinas/ ramps were poorly located.

This study demonstrates the need for careful planning where to access the lake could make a difference if a marina or ramp is economically and environmentally sustainable.

#### **IN CONCLUSION**

As you can see, lots of productive work continues on behalf of the membership. Please call or write if you have a concept, idea or contact that might be helpful in carrying out our mission. Want to be more active? Wish to join a committee or the Board? Have a favorite project? We are

interested in you. This is your organization and we appreciate your continued support.

Pass this newsletter along enabling your neighbors, relatives or friends to join. The protection of the Great Lakes should be of interest to everyone.

GLC, Michigan/Lake Michigan Chapter, Bill Somerville, Chairman

**To join, call or fax (269) 857-8945.**